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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

COLUMBIA BRANDS USA, LLC, an
Oregon limited liability company, as
successor-in-interest to COLUMBIA
SPORTSWEAR USA CORPORATION,

Plaintiff,

v.

ST. GEORGE OUTLET DEVELOPMENT
LLC, a New York limited liability company,

Defendant.

Case No. 3:18-cv-01183

COMPLAINT

Plaintiff Columbia Brands USA, LLC (“Columbia”) alleges as follows:

1. This case arises out of an agreement between Columbia’s predecessor entity, Columbia Sportswear USA Corporation (“Columbia Sportswear”) and St. George Outlet Development LLC (“St. George”). In August, 2015, Columbia Sportswear entered into a lease

for retail space at Empire Outlets, a proposed destination retail shopping outlet mall on Staten Island, in New York City. Construction of Empire Outlets initially was to be completed, with Columbia Sportswear to take possession of the premises, no later than September 8, 2017. Columbia and St. George subsequently agreed to extend that outside delivery date to November 6, 2017. Construction still has not been completed. No date has been set for when construction will be completed and Columbia will be able to occupy the premises. By this action, Columbia seeks a declaration that St. George has failed to comply with its obligations under the parties' lease agreement, and that Columbia has no obligations under the lease agreement. Columbia also seeks to recover damages and its attorneys' fees, costs and expenses incurred herein, as set forth in the lease agreement.

PARTIES

2. Columbia is an Oregon limited liability company, with its principal place of business in Portland, Oregon. Columbia is a wholly owned subsidiary of Columbia Brands Holding Company and GTS, Inc. Columbia Brands Holding Company and GTS, Inc. are Oregon corporations, with their principal places of business in Portland, Oregon.

3. Columbia is the successor-in-interest to Columbia Sportswear, pursuant to a plan of conversion effective December 31, 2015. At all material times, and prior to December 31, 2015, Columbia Sportswear was an Oregon corporation with its principal place of business in Portland, Oregon.

4. Defendant St. George Outlet Development LLC ("St. George") is a New York limited liability company, with its principal place of business in Brooklyn, New York. On information and belief, no member of St. George is a citizen of Oregon.

JURISDICTION

5. Columbia is a citizen of Oregon.
6. On information and belief, St. George is a citizen of New York.
7. The lease agreement requires over \$5 million in payments from Columbia to St. George.
8. This court has jurisdiction under 28 U.S.C. § 1332(a), because (on information and belief) the parties are citizens of different states, and the amount in controversy exceeds \$75,000.

FACTUAL ALLEGATIONS

9. Prior to August 26, 2015, Columbia Sportswear and St. George entered into negotiations for Columbia Sportswear to lease space to operate an outlet store in the yet to be constructed Empire Outlets.
10. St. George promoted Empire Outlets as a “world-class shopping destination” of outlet stores on Staten Island, just a twenty-minute ferry ride from Manhattan. St. George represents (and has represented) that Empire Outlets will “host approximately 100 shops of the finest brands, an extensive array of waterfront food and beverage concepts and a 190 room boutique hotel.”
11. On or about August 26, 2015, St. George and Columbia Sportswear entered into a lease agreement (the “Lease”). Under the terms of the Lease, Columbia Sportswear agreed to rent approximately 7,500 square feet of retail space in Empire Outlets. The term of the Lease is for ten years, with payments, including rent, operating costs and fees, to exceed \$5 million over

the life of the Lease. Lease payments and the lease term begin after the St. George delivers the premises to Columbia.

12. Section 2.03(A) of the Lease provides, as relevant:

“The delivery of possession date is estimated to occur on or before **September 8, 2016**, and shall be confirmed by Landlord or Landlord’s supervising architect, by written notice to Tenant at least thirty (30) days prior to the date Landlord delivers possession of the Premises to Tenant as required under the terms of this Lease (the “**Delivery Date**”). Notwithstanding the forgoing to the contrary, Landlord reserves the right to delay the Delivery Date to a date no later than **September 8, 2017** (“**Outside Delivery Date**”), by written notice to Tenant given no later than three (3) months prior to the Delivery Date. In the event the Premises are not delivered on or before the Outside Delivery Date, subject to delays pursuant to **Section 17.21** or delays caused by Tenant, Tenant may terminate this Lease provided Tenant delivers notice of such termination within thirty (30) days following the Outside Delivery Date, and if Landlord has not delivered the Premises prior to the end of such thirty (30) day period, then Landlord shall reimburse Tenant for all out-of-pocket costs actually expended by Tenant up to a maximum of Thirty-Five Thousand and No/100 Dollars (\$35,000.00), and the parties shall be relieved from any further liability hereunder.”

(Emphasis in original).

13. The Lease contains an “Inability to Perform” provision, Section 17.20 (not Section 17.21), which provides, in relevant part, that if St. George “is delayed or prevented from performing any of their obligations under this Lease by reason of strike, lockout, civil commotion, acts of God or through another cause which is beyond either party’s control and is not due to the willful act or neglect by the applicable party, then the period of such delay or such prevention shall be deemed to be added to the time herein provided for the performance of such obligation . . .”

14. The Lease contains a “Time is of the Essence” provision, Section 17.13, which provides that “[t]ime is of the essence of this Lease.”

15. The Lease contains an “Attorneys’ Fee” provision, Section 17.19, providing that “[i]n any dispute resolution or other proceeding, including appeal, the party prevailing will receive from the other all costs, expenses and reasonable attorneys’ fees as fixed by the arbitrator or court.”

16. On September 14, 2015, St. George notified Columbia Sportswear that “due to the complicated nature of the site, multiple City and State Agencies involved, and site improvement work in very close proximity to an active MTA rail line . . . pre-development took longer than originally anticipated.” St. George represented that “we are now beyond any technical delays and are proceeding full steam ahead with construction . . .”

17. On May 9, 2016, St. George notified Columbia Sportswear “that pursuant to Section 2.03(A) of the Lease, Landlord is hereby exercising its right to change the Delivery Date to **September 8, 2017**. Accordingly, all references to the Delivery Date in the Lease shall now refer to **September 8, 2017**.” (Emphasis in original).

18. On April 10, 2017, St. George and Columbia entered into a “First Amendment to Lease.” That amendment modified the Delivery Date and Outside Delivery Date. It provided, in relevant part: “The Delivery Date and Outside Delivery Date (as defined in Section 2.03[A] of the Lease) are now known as November 6, 2017.” The First Amendment to Lease made no other material modifications to the Lease.

19. There have been no subsequent amendments to the Lease.

20. St. George did not deliver the premises by the November 6, 2017 Outside Delivery Date as set forth in First Amendment to Lease.

21. On December 1, 2017, Columbia notified St. George that, due to St. George's failure to deliver the premises by the November 6, 2017 Outside Delivery Date, Columbia "hereby exercises its termination right under the Lease." Columbia demanded reimbursement for out-of-pocket costs, pursuant to Section 2.03(A).

22. St. George has refused accept Columbia's right to terminate the Lease and has not reimbursed Columbia for out-of-pocket costs. St. George has asserted that its failure to timely deliver the premises is the result of events of "unavoidable delay" that are no fault of St. George's and, accordingly, the Outside Delivery Date has been extended. St. George appears to rely on purported events of "unavoidable delay" that occurred *before* the parties entered into the April 10, 2017 First Amendment to Lease, which modified the Outside Delivery Date to November 6, 2017.

23. Despite repeated requests from Columbia, St. George has failed to provide Columbia with any documentation or sufficient information to support its claim of "unavoidable delay."

FIRST CLAIM FOR RELIEF

(Breach of Contract -- Declaratory Relief)

24. Plaintiff incorporates by reference the foregoing paragraphs as if they were fully set forth herein.

25. Columbia has complied with its obligations under the Lease and has met all conditions precedent to exercise its right to terminate the Lease.

26. St. George has breached a condition precedent of the Lease, by failing to provide the premises by the Outside Delivery Date. St. George's breach is not excused.

27. Columbia has legally and validly terminated the Lease.

28. Pursuant to 28 U.S.C. § 2201, Columbia seeks a declaration setting forth that the Lease is terminated, and that Columbia has no further obligations under the Lease.

29. Pursuant to section 17.19 of the Lease, Columbia seeks its attorneys' fees, costs and expenses incurred in pursuing this claim.

SECOND CLAIM FOR RELIEF

(Breach of Contract -- Damages)

30. Plaintiff incorporates by reference the foregoing paragraphs as if they were fully set forth herein.

31. Despite demand, St. George has not reimbursed Columbia for out-of-pocket expenses, as provided in section 2.03(A) of the Lease.

32. As a result of St. George's failure to reimburse Columbia, Columbia has incurred damages of at least \$35,000.

33. Pursuant to section 17.19 of the Lease, Columbia seeks its attorneys' fees, costs and expenses incurred pursuing this claim.

WHEREFORE, Columbia requests the following relief:

A. A declaration that the Lease is terminated, and Columbia has no further obligations under the Lease.

B. Damages of \$35,000, or an amount to be proven at trial.

C. Columbia's attorneys' fees, costs and expenses incurred herein.

D. Prejudgment interest.

E. Such other relief as the Court deems just and proper.

DATED this 3rd day of July, 2018.

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